

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

MILWAUKEE ELECTRIC TOOL)	
CORPORATION,)	
METCO BATTERY TECHNOLOGIES,)	
LLC, AC (MACAO COMMERCIAL)	
OFFSHORE) LIMITED and)	CASE NO _____
TECHTRONIC INDUSTRIES CO. LTD.,)	PATENT CASE
)	
Plaintiffs,)	JURY DEMANDED
)	
v.)	
)	
RICHPower INDUSTRIES INC.,)	
)	
Defendant.		

COMPLAINT FOR PATENT INFRINGEMENT

Milwaukee Electric Tool Corporation, Metco Battery Technologies, LLC, AC (Macao Commercial Offshore) Limited, and Techtronic Industries Co. Ltd. (collectively "Plaintiffs"), for their Complaint against the Defendant, Richpower Industries, Inc. ("Defendant"), allege as follows:

THE PARTIES

1. Plaintiff Milwaukee Electric Tool Corporation ("Milwaukee Tool") is a Delaware corporation with its principal place of business located at 13135 West Lisbon Road, Brookfield, Wisconsin 53005.

2. Plaintiff Metco Battery Technologies, LLC ("MBT") is a Delaware company with its principal place of business located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

3. Plaintiff AC (Macao Commercial Offshore) Limited ("TTi Macao") is a Macao corporation with its principal place of business located at Avenida da Praia Grande, n. 429 - Centro Comercial da Praia Grande, 26. andar "D."

4. Plaintiff Techtronic Industries Co. Ltd. ("TTi Hong Kong") is a Hong Kong corporation with its principal place of business located at 24/F CDW Building, 388 Castle Peak Road, Tsuen Wan, New Territories, Hong Kong.

5. Upon information and belief, Defendant Richpower Industries Inc. is a South Carolina corporation with a principal place of business at 736 Hampton Road, Williamston, SC 29697.

6. Upon information and belief, Defendant makes, sells and offers for sale handheld cordless power tools in the United States under the at least the Genesis brand name.

NATURE, JURISDICTION AND VENUE

7. This is an action for patent infringement founded upon the patent laws of the United States, 35 U.S.C § 100 *et seq.*, including, without limitation, 35 U.S.C. § 271.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a).

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

10. Upon information and belief, Defendant regularly and systematically transacts business in the State of Wisconsin and in this District by, among other things, the sale and offer for sale of its infringing products described herein throughout the District through retail distributors including Fleet Farm stores in the District.

THE PATENTS IN SUIT

11. On June 30, 2009, United States Patent No. 7,554,290 (the "'290 patent") was duly and properly issued to Todd W. Johnson et al., for an invention entitled "Lithium-Based Battery Pack for a Hand-Held Power Tool."

12. Milwaukee Tool, TTi Macao, and TTi Hong Kong are the owners by assignment of the '290 patent.

13. MBT has a license to certain exclusive rights under the '290 patent.

14. Together Plaintiffs possess all rights necessary to bring this suit for infringement of the '290 patent.

15. The '290 patent was the subject of *inter partes* reexamination proceeding No. 95/001,848 before the United States Patent and Trademark Office ("PTO"). That proceeding completed with the issuance of a reexamination certificate, confirming the patentability of all claims of the '290 patent without modification.

16. On May 17, 2011, United States Patent No. 7,944,173 (the "'173 patent") was duly and properly issued to Todd W. Johnson et al., for an invention entitled "Lithium-Based Battery Pack for a High Current Draw, Hand Held Power Tool."

17. Milwaukee Tool, TTi Macao, and TTi Hong Kong are the owners by assignment of the '173 patent.

18. MBT has a license to certain exclusive rights under the '173 patent.

19. Together Plaintiffs possess all rights necessary to bring this suit for infringement of the '173 patent.

20. The '173 patent was the subject of *inter partes* reexamination proceeding No. 95/001,847 before the PTO. An Action Closing Prosecution was issued in that

proceeding rejecting all proposed grounds for invalidity. The proceeding will therefore shortly end with the issuance of a reexamination certificate, confirming the patentability of all claims of the '173 patent without modification.

21. On August 16, 2011, United States Patent No. 7,999,510 (the "'510 patent") was duly and properly issued to Todd W. Johnson et al., for an invention entitled "Method and System of Charging Multi-Cell Lithium-Based Batteries."

22. Milwaukee Tool, TTi Macao, and TTi Hong Kong are the owners by assignment of the '510 patent.

23. MBT has a license to certain exclusive rights under the '510 patent.

24. Together Plaintiffs possess all rights necessary to bring this suit for infringement of the '510 patent.

25. The '510 patent was the subject of *inter partes* reexamination proceeding No. 95/001,846 before the PTO. That proceeding completed with the issuance of a reexamination certificate, confirming the patentability of all claims of the '510 patent without modification.

BACKGROUND FACTS

26. Collectively the '290 patent, '173 patent, and '510 patent (hereafter, when used collectively, the "Patents-In-Suit") cover aspects of Milwaukee Tool's pioneering inventions in the area of Lithium-Ion ("Li-Ion") powered handheld cordless power tools and associated technologies related to controlling and charging battery packs for such tools.

27. Prior to Milwaukee Tool's introduction of the first Li-Ion powered handheld cordless power tool in January 2005, most handheld cordless power tools were powered by battery packs utilizing Nickel-Cadmium ("NiCad") batteries.

28. By the late 1990's, NiCad batteries had plateaued in potential performance.

29. Even at their plateau, NiCad batteries could not successfully provide power equivalent to a corded, line-voltage power tool in a format for handheld cordless power tools because NiCad batteries of sufficient power were too heavy and bulky to be commercially viable.

30. Prior to Milwaukee Tool's industry-changing introduction of the first Li-Ion powered tool providing line-voltage performance in a handheld cordless tool, Li-Ion chemistry was generally viewed as being unsuitable for delivering the high-power required for a cordless power tool.

31. Milwaukee Tool revolutionized the cordless handheld power tool industry in 2005 with its introduction of the V28 line of Li-Ion powered tools embodying the inventions of the Patents-In-Suit. The V28 line were the first handheld cordless power tools to perform equivalently to line-voltage corded tools while remaining as light and compact as earlier lower power cordless tools.

32. Industry press at the time of Milwaukee Tool's introduction praised the quantum leap forward represented by Milwaukee Tool's new technology. Many well-respected industry commentators recognized that Milwaukee Tool's invention was an industry first and satisfied the long-felt demand for a convenient cordless handheld tool with power equivalent to a comparable corded tool. The broad acknowledgement of

Milwaukee Tool's revolutionary invention culminated with Milwaukee Tool's receipt of many industry awards for innovation, including, for example:

- (a) The 2005 Editors' Choice Grand Award from *Tools of the Trade*;
- (b) A 2005 *Handy* Innovation Award as one of Nine Groundbreaking New Products;
- (c) The 2005 Breakthrough Award from *Popular Mechanics*;
- (d) The 2005 Most Innovative Product award from *Electrical Contracting Products*;
- (e) A 2006 Top 10 Innovative Tools award from *Workbench*;
- (f) The Most Valuable Product award from *Building Products Magazine*;
- (g) The 2006 Editors' Choice Grand Award (Co-recipient) from *Tools of the Trade*; and
- (h) The 2006 Readers' Choice Award from *Woodshop News*.

33. Soon after Milwaukee Tool's introduction, Li-Ion became the *de facto* industry standard. No other technology could offer the combination of high power, light weight and compact size made possible by Milwaukee Tool's inventions.

34. Every competitor in the handheld cordless power tool industry, including Defendant, soon adopted Milwaukee Tool's inventions and transitioned, at least in part, to the use of Li-Ion powered battery packs in their handheld cordless power tools.

35. As demonstrated by Defendant's infringement of the Patents-In-Suit, handheld cordless power tools utilizing Milwaukee Tool's foundational inventions related to Li-Ion powered battery packs dominate the industry.

COUNT I
(INFRINGEMENT OF THE '290 PATENT)

36. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-35.

37. Defendant makes, imports, offers for sale, and/or sells handheld cordless power tools that utilize multi-cell Li-Ion battery packs. These products are sold in various combinations of tools, battery packs, and chargers. Among such lines of tools made, imported, offered for sale, and/or sold by Defendant are the Genesis lines of 12V Lithium-Ion cordless tools. Each of these products made, imported, offered for sale, and/or sold by Defendant uses multi-cell Li-Ion battery packs that can produce an average discharge current greater than or equal to approximately 20 amps. Defendant makes, imports, offers for sale, and/or sells these battery packs under at least the Genesis label, under various part numbers or designations, including but not limited to GLAB12. Defendant also makes, imports, offers for sale, and/or sells these and comparable battery packs as part of various tools and kits under a variety of other designations.

38. Defendant is infringing Plaintiffs' exclusive rights in the '290 patent in violation of 35 U.S.C. § 271 by manufacturing, importing, using, offering for sale, or selling products that embody the inventions of and are within the scope of the claims of the '290 patent, and will continue to do so unless enjoined by this Court. Such products include, but are not limited to, the battery packs identified in paragraph 37 and other comparable multi-cell Li-Ion battery packs capable of producing an average discharge current greater than or equal to approximately 20 amps as set forth in the '290 patent, whether sold alone or together with other packs, tools, and/or chargers.

39. Upon information and belief, Defendant was on notice and aware of the '290 patent prior to the filing of this Complaint and as early as June 30, 2009. Nevertheless, Defendant has continued to infringe, despite an objectively high likelihood that its actions constitute infringement of the '290 Patent. Accordingly, Defendant's infringement has been and continues to be willful.

40. Milwaukee Tool's inventions related to Li-Ion technology in handheld cordless power tools have been the subject of extensive industry press coverage and Milwaukee Tool consistently marked its products with the applicable Patents-In-Suit.

COUNT II
(INFRINGEMENT OF THE '173 PATENT)

41. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-40.

42. Defendant makes, imports, offers for sale, and/or sells handheld cordless power tools that utilize multi-cell Li-Ion battery packs. These products are sold in various combinations of tools, battery packs, and chargers. Among such tools made, imported, offered for sale, and/or sold by Defendant are the Genesis lines of 12V Lithium-Ion cordless tools. Each of these products made, imported, offered for sale, and/or sold by Defendant uses multi-cell Li-Ion battery packs that can produce an average discharge current greater than or equal to approximately 20 amps, incorporate at least one terminal through which the battery pack discharge current flows to a corresponding terminal on the tool, and include a locking assembly to lock the pack to the tool. Defendant makes, imports, offers for sale, and/or sells these battery packs under at least the Genesis label, under various part numbers or designations, including but not limited to GLAB12. Defendant also makes, imports, offers for sale, and/or sells these

and comparable battery packs as part of various tools and kits under a variety of other designations.

43. Defendant is infringing Plaintiffs' exclusive rights in the '173 patent in violation of 35 U.S.C. § 271 by manufacturing, importing, using, offering for sale, or selling products that embody the inventions of and are within the scope of the claims of the '173 patent, and will continue to do so unless enjoined by this Court. Such products include, but are not limited to, the battery packs identified in paragraph 42 and other comparable multi-cell Li-Ion battery packs capable of producing an average discharge current greater than or equal to approximately 20 amps, that incorporate at least one terminal through which the battery pack discharge current flows to a corresponding terminal on the tool, and include a locking assembly to lock the pack to the tool as set forth in the '173 patent, whether such packs are sold alone or together with other packs, tools, and/or chargers.

44. Upon information and belief, Defendant was on notice and aware of the '173 patent prior to the filing of this Complaint and as early as May 17, 2011. Nevertheless, Defendant has continued to infringe, despite an objectively high likelihood that its actions constitute infringement of the '173 Patent. Accordingly, Defendant's infringement has been and continues to be willful.

45. Milwaukee Tool's inventions related to Li-Ion technology in handheld cordless power tools have been the subject of extensive industry press coverage and Milwaukee Tool consistently marked its products with the applicable Patents-In-Suit.

COUNT III
(INFRINGEMENT OF THE '510 PATENT)

46. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-45.

47. Defendant makes, imports, offers for sale, and/or sells handheld cordless power tools that utilize multi-cell Li-Ion battery packs. These products are sold in various combinations of tools, battery packs, and chargers. Among such tools made, imported, offered for sale, and/or sold by Defendant are the Genesis lines of 12V Lithium-Ion cordless tools. Each of these products made, imported, offered for sale, and/or sold by Defendant uses multi-cell Li-Ion battery packs that can produce an average discharge current greater than or equal to approximately 20 amps and have a nominal pack voltage of at least approximately 12 volts, respectively. Defendant makes, imports, offers for sale, and/or sells these battery packs under at least the Genesis label, under various part numbers or designations, including but not limited to GLAB12. Defendant also makes, imports, offers for sale, and/or sells these and comparable battery packs as part of various tools and kits under a variety of other designations.

48. Defendant is infringing Plaintiffs' exclusive rights in the '510 patent in violation of 35 U.S.C. § 271 by manufacturing, importing, using, offering for sale, or selling products that embody the inventions of and are within the scope of the claims of the '510 patent, and will continue to do so unless enjoined by this Court. Such products include, but are not limited to, the battery packs identified in paragraph 47 and other comparable multi-cell Li-Ion battery packs capable of producing an average discharge current greater than or equal to approximately 20 amps, and have a nominal pack voltage

of at least approximately 12 volts, respectively as set forth in the '510 patent, whether such packs are sold alone or together with other packs, tools, and/or chargers.

49. Upon information and belief, Defendant was on notice and aware of the '510 patent prior to the filing of this Complaint and as early as August 16, 2011. Nevertheless, Defendant has continued to infringe, despite an objectively high likelihood that its actions constitute infringement of the '510 Patent. Accordingly, Defendant's infringement has been and continues to be willful.

50. Milwaukee Tool's inventions related to Li-Ion technology in handheld cordless power tools have been the subject of extensive industry press coverage and Milwaukee Tool consistently marked its products with the applicable Patents-In-Suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant, as follows:

- A. Finding that Defendant has infringed, respectively, each of the '290 patent, the '173 patent, and the '510 patent;
- B. Awarding damages to Plaintiffs under 35 U.S.C. § 284, along with interest and costs for Defendant's infringement, respectively, of each of the '290 patent, the '173 patent, and the '510 patent;
- C. Finding that this case is an exceptional case under 35 U.S.C. § 285, and awarding Plaintiffs their attorneys' fees and costs;
- D. Finding that Defendant's infringement was willful, and trebling any damages found or assessed;

- E. Entering a permanent injunction under 35 U.S.C. § 283 enjoining each of Defendant, its officers, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting or participating with any of them, from manufacturing, making, selling, offering for sale, importing, or using the infringing products identified herein or any comparable product that infringes any of the '290 patent, the '173 patent, or the '510 patent; and
- F. Awarding to Plaintiffs such other and further relief as the Court may deem just and equitable.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all matters and issues triable by a jury.

Dated: October 16, 2014

Respectfully submitted,

s/Scott W. Hansen

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